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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

CARLOS AGUSTIN GOROSAVE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Criminal Case No. 08-cr-4429 DMS  
Civil Case No. 16-cv-1511 DMS

**ORDER DENYING MOTION  
FOR CERTIFICATE OF  
APPEALABILITY**

On June 17, 2016, Petitioner Carlos Agustin Gorosave filed a Motion to Vacate, Set Aside, or Correct Sentence Under 28 U.S.C. § 2255, challenging his sentence in light of the recent Supreme Court decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). On March 1, 2017, this Court issued an order denying Petitioner's motion. The Court held bank robbery under 18 U.S.C. § 2113(a) remains a crime of violence under U.S.S.G. § 4B1.2(a)(1). On March 3, 2017, Petitioner filed a Motion for Certificate of Appealability, contending "reasonable jurists" could find the question of whether bank robbery remains a crime of violence.

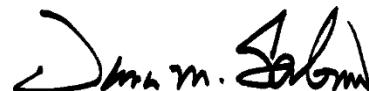
A certificate of appealability is authorized "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists

1 could conclude the issues presented are adequate to deserve encouragement to  
2 proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see also Slack v.*  
3 *McDaniel*, 529 U.S. 473, 484 (2000).

4 Petitioner has not demonstrated that reasonable jurists could find debatable  
5 this Court’s denial of Petitioner’s motion. On March 6, 2017, the United States  
6 Supreme Court issued a decision in *Beckles v. United States*, No. 15-8544, 2017 WL  
7 855781, at \*9 (U.S. Mar. 6, 2017), holding “that the advisory Sentencing Guidelines  
8 are not subject to a vagueness challenge under the Due Process Clause and that §  
9 4B1.2(a)’s residual clause is not void for vagueness.” Therefore, *Johnson* does not  
10 apply to the Career Offender Guidelines, and bank robbery under § 2113(a) remains  
11 a crime of violence under § 4B1.2. Accordingly, Petitioner’s motion for a certificate  
12 of appealability is denied.

13 **IT IS SO ORDERED.**

14 Dated: March 7, 2017



15 Hon. Dana M. Sabraw  
16 United States District Judge

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